

## Request for Reconsideration after Final Action

The table below presents the data as entered.

Input Field	Entered
SERIAL NUMBER	77787804
LAW OFFICE ASSIGNED	LAW OFFICE 115
MARK SECTION (no change)	
ARGUMENT(S)	
<p>In the Office Action with a mailing date of June 16, 2014, the Examining Attorney maintained the refusal for registration on the basis that the specimen does not show the applied-for mark, as shown in the drawing, in use in commerce. 15 U.S.C. §§ 1051, 1127; TMEP SS 904, 904.07(a). Applicant is submitting this Request for Reconsideration and the Notice of Appeal. With regard to the refusal of registration, please consider the following.</p> <p>In previous cases, the Board has agreed that if a specimen contains extraneous matter that would have required a disclaimer had that matter been included in the original drawing and description of the mark, then the “drawing presents a substantially exact representation of the mark as actually used in commerce, and applicant need not submit new specimens showing the mark without” the extraneous matter. <i>In re Burrell Mining Products, Inc.</i>, #74693924 (TTAB, April 8, 1999) (finding that the drawing of a design mark was a substantially exact representation of the mark, as used in commerce, despite the fact that the mark in the specimen had extraneous wording, such as the name and address of the mark’s owner). The word “project” is defined as “a large or major undertaking”. Please see Attachment A for the definition of “project”. Had Applicant applied for the mark “EPIDEL PROJECT”, a disclaimer of the word “project” would have certainly been required because the word “project” is descriptive or generic. <i>See also, In re Delaware Valley Legacy Fund</i>, Serial No. 78608669 (TTAB April 11, 2008). As the word “project” would have required a disclaimer had it been included in the applied-for mark, its presence in the specimen should not serve as the basis of a refusal for registration.</p> <p>On the specimens, the word “project” was included because Applicant’s product, which is a medical product/pharmaceutical, is still in testing. It is typical for medical products/pharmaceuticals to require many years of testing before approval. As such, TMEP Section 901.02 explicitly recognizes that “use in the ordinary course of trade” in the pharmaceutical industry encompasses a “company’s shipment to clinical investigators during the Federal approval process...” Applicant’s mark is “EPIDEL”. The word “project” is merely informational since the product is not yet sold to consumers.</p> <p>The Examining Attorney argues that the phrase “Epidel™ Project” creates a unified impression because the mark “EPIDEL” and the word “project” are in the same font; written in the same size; and written in-line with each other. This was also the case in <i>In re Hudson Fairfax Group LLC</i>, No. 76662560</p>	

(TTAB November 21, 2008), where the applied-for mark was “CONTINUUM” and the specimen displayed “INDIA CONTINUUM FUND”. A copy of the specimen is included in Attachment B. As in the present case, the examining attorney’s argument in support of the refusal for registration was based on the fact that the additional wording was also in the same font; written in the same size; and written in-line with the applied-for mark. According to the Board in the “CONTINUUM” case, the question was whether the applied-for mark created a separate commercial impression because the additional wording did “not indicate source.” With regard to “FUND”, the Board held that this word was generic, and as such, could not be part of a unitary phrase or mark. As a generic word, it could not substantially distinguish the specimen from the drawing. With regard to the word “INDIA”, the examining attorney in *In re Hudson* argued that India was a descriptive word capable of functioning as a trade mark. The Board was not persuaded, stating:

“Moreover, the mere fact that a term is not generic does not mean that it has trademark significance, nor is that the determining factor in whether the omission of that terms results in a mutilation of the mark *as actually used*” in the specimen. (Emphasis added)

The Board went on to find that consumers were not going to attach any more significance to the word “INDIA” beyond the fact that it indicated the geographic location of the investment fund. There is no evidence in the record to support that consumers will attach significance to the word “project” beyond its generic meaning. Rather, Applicant respectfully submits that consumers will perceive “project” with its normal connotation and meaning, making the word “project” a word with no trademark significance.

The issue of whether the word “project” can have trademark significance when simply appended to another mark was considered by the Board in *In re Delaware Valley Legacy Fund*, Serial No. 78608669 (TTAB April 11, 2008). In this case, the applicant was attempting to register the mark “WILLPOWER PROJECT”, where the word “project” had already been disclaimed. The examining attorney refused registration on the basis that there was a likelihood of confusion with the registered marks “WILLPOWER” and “WILL POWER”. The issue was whether the commercial impression of “WILLPOWER PROJECT” was the same as the commercial impressions of the registered marks. Ultimately, the comparison of the commercial impression depended on the question of whether the word “project”, when simply added to a word functioning as mark, could indicate trademark significance. The Board found that the word “project” did not have trademark significance because it is “a commonly used term with little or no source identifying significance.” As a result, the word “project” did not distinguish the commercial impressions of “WILLPOWER PROJECT” and “WILLPOWER/WILL POWER”, and consumers would think that the applied-for mark indicated the same source of origin as either of the registered marks. *In Delaware Valley Legacy Fund* supports a finding that the commercial impressions of “EPIDEL” and “EPIDEL™ PROJECT” are the same.

In the Office Action of June 16, The Examining Attorney argues that the presence of the letters “TM” are not enough to visually and conceptually separate the mark “EPIDEL” and the word “project.” The present case is analogous to the case in *In re Green U.O.D., Inc.*, #76615858 (March 13, 2008), where the applicant applied-for the mark “URBAN RENEWAL” but the specimen showed “URBAN RENEWAL<sup>at</sup> HOME”. (The words “URBAN RENEWAL” and “HOME” were in the same font, size and visual plane; the word “at” was in superscript.) The Board found that because “at” was not in the same visual plane, a different size, and in lowercase letters, “at” functioned as a visual and conceptual separator between the applied-for mark and the extraneous wording. This same reasoning is applicable to the present case, where the letters “TM” are also in super-script, in a smaller size and, unlike the mark “EPIDEL” and the word “project”, in uppercase letters. Therefore, the letters “TM” act as a visual and

conceptual separator that severs the commercial impression of the mark “EPIDEL” from the commercial impression of the word “project”.

In view of the above, Applicant respectfully requests withdrawal of the refusal for registration.

## EVIDENCE SECTION

### EVIDENCE FILE NAME(S)

<b>ORIGINAL PDF FILE</b>	<a href="#">evi_721645198-20141215162645175088_. Attachment_A.pdf</a>
<b>CONVERTED PDF FILE(S)</b> (7 pages)	<a href="#">\\TICRS\EXPORT16\IMAGEOUT16\777\878\77787804\xml18\RFR0002.JPG</a>
	<a href="#">\\TICRS\EXPORT16\IMAGEOUT16\777\878\77787804\xml18\RFR0003.JPG</a>
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<b>ORIGINAL PDF FILE</b>	<a href="#">evi_721645198-20141215162645175088_. Attachment_B.pdf</a>
<b>CONVERTED PDF FILE(S)</b> (2 pages)	<a href="#">\\TICRS\EXPORT16\IMAGEOUT16\777\878\77787804\xml18\RFR0009.JPG</a>
	<a href="#">\\TICRS\EXPORT16\IMAGEOUT16\777\878\77787804\xml18\RFR0010.JPG</a>
<b>DESCRIPTION OF EVIDENCE FILE</b>	Attachment A and Attachment B

## SIGNATURE SECTION

<b>RESPONSE SIGNATURE</b>	/Rachel A. Rice/
<b>SIGNATORY'S NAME</b>	Rachel A. Rice
<b>SIGNATORY'S POSITION</b>	Attorney of record, Colorado bar member
<b>DATE SIGNED</b>	12/15/2014
<b>AUTHORIZED SIGNATORY</b>	YES
<b>CONCURRENT APPEAL NOTICE FILED</b>	YES

## FILING INFORMATION SECTION

<b>SUBMIT DATE</b>	Mon Dec 15 16:29:23 EST 2014
<b>TEAS STAMP</b>	USPTO/RFR-72.164.51.98-20 141215162923029341-777878 04-500b2073f9b716d4b89824 4979a582d1d0124049ee8e461 ffef1c67b96b1db7-N/A-N/A- 20141215162645175088

PTO Form 1960 (Rev 9/2007)  
OMB No. 0651-0050 (Exp. 07/31/2017)

## Request for Reconsideration after Final Action To the Commissioner for Trademarks:

Application serial no. **77787804** has been amended as follows:

### ARGUMENT(S)

**In response to the substantive refusal(s), please note the following:**

In the Office Action with a mailing date of June 16, 2014, the Examining Attorney maintained the refusal for registration on the basis that the specimen does not show the applied-for mark, as shown in the drawing, in use in commerce. 15 U.S.C. §§ 1051, 1127; TMEP SS 904, 904.07(a). Applicant is submitting this Request for Reconsideration and the Notice of Appeal. With regard to the refusal of registration, please consider the following.

In previous cases, the Board has agreed that if a specimen contains extraneous matter that would have required a disclaimer had that matter been included in the original drawing and description of the mark, then the “drawing presents a substantially exact representation of the mark as actually used in commerce, and applicant need not submit new specimens showing the mark without” the extraneous matter. *In re Burrell Mining Products, Inc.*, #74693924 (TTAB, April 8, 1999) (finding that the drawing of a design mark was a substantially exact representation of the mark, as used in commerce, despite the fact that the mark in the specimen had extraneous wording, such as the name and address of the mark’s owner). The word “project” is defined as “a large or major undertaking”. Please see Attachment A for the definition of “project”. Had Applicant applied for the mark “EPIDEL PROJECT”, a disclaimer of the word “project” would have certainly been required because the word “project” is descriptive or generic. *See also, In re Delaware Valley Legacy Fund*, Serial No. 78608669 (TTAB April 11, 2008). As the word “project” would have required a disclaimer had it been included in the applied-for mark, its presence in the specimen should not serve as the basis of a refusal for registration.

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The Examining Attorney argues that the phrase “Epidel™ Project” creates a unified impression because the mark “EPIDEL” and the word “project” are in the same font; written in the same size; and written in-line with each other. This was also the case in *In re Hudson Fairfax Group LLC*, No. 76662560 (TTAB November 21, 2008), where the applied-for mark was “CONTINUUM” and the specimen displayed “INDIA CONTINUUM FUND”. A copy of the specimen is included in Attachment B. As in the present case, the examining attorney’s argument in support of the refusal for registration was based on the fact that the additional wording was also in the same font; written in the same size; and written in-line with the applied-for mark. According to the Board in the “CONTINUUM” case, the question was whether the applied-for mark created a separate commercial impression because the additional wording did “not indicate source.” With regard to “FUND”, the Board held that this word was generic, and as such, could not be part of a unitary phrase or mark. As a generic word, it could not substantially distinguish the specimen from the drawing. With regard to the word “INDIA”, the examining attorney in *In re Hudson* argued that India was a descriptive word capable of functioning as a trade mark. The Board was not persuaded, stating:

“Moreover, the mere fact that a term is not generic does not mean that it has trademark significance, nor is that the determining factor in whether the omission of that terms results in a mutilation of the mark *as actually used*” in the specimen. (Emphasis added)

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## **EVIDENCE**

Evidence in the nature of Attachment A and Attachment B has been attached.

### **Original PDF file:**

[evi\\_721645198-20141215162645175088\\_ . Attachment A.pdf](#)

### **Converted PDF file(s) ( 7 pages)**

[Evidence-1](#)

[Evidence-2](#)

[Evidence-3](#)

[Evidence-4](#)

[Evidence-5](#)

[Evidence-6](#)

[Evidence-7](#)

### **Original PDF file:**

[evi\\_721645198-20141215162645175088\\_ . Attachment B.pdf](#)

### **Converted PDF file(s) ( 2 pages)**

[Evidence-1](#)

[Evidence-2](#)

## **SIGNATURE(S)**

### **Request for Reconsideration Signature**

Signature: /Rachel A. Rice/ Date: 12/15/2014

Signatory's Name: Rachel A. Rice

Signatory's Position: Attorney of record, Colorado bar member

The signatory has confirmed that he/she is an attorney who is a member in good standing of the bar of the highest court of a U.S. state, which includes the District of Columbia, Puerto Rico, and other federal territories and possessions; and he/she is currently the applicant's attorney or an associate thereof; and to the best of his/her knowledge, if prior to his/her appointment another U.S. attorney or a Canadian attorney/agent not currently associated with his/her company/firm previously represented the applicant in this matter: (1) the applicant has filed or is concurrently filing a signed revocation of or substitute power of attorney with the USPTO; (2) the USPTO has granted the request of the prior representative to withdraw; (3) the applicant has filed a power of attorney appointing him/her in this matter; or (4) the applicant's appointed U.S. attorney or Canadian attorney/agent has filed a power of attorney appointing him/her as an associate attorney in this matter.

The applicant is filing a Notice of Appeal in conjunction with this Request for Reconsideration.

Serial Number: 77787804

Internet Transmission Date: Mon Dec 15 16:29:23 EST 2014  
TEAS Stamp: USPTO/RFR-72.164.51.98-20141215162923029  
341-77787804-500b2073f9b716d4b898244979a  
582d1d0124049ee8e461ffef1c67b96b1db7-N/A  
-N/A-20141215162645175088

**ATTACHMENT A**



Dictionary (<http://dictionary.reference.com/browse/project>)  
 Thesaurus (<http://www.thesaurus.com/browse/project>)  
 Translator (<http://translate.reference.com/translate?query=project>)

project

SHOPBOP

Follow @Shopbop on Twitter  
for early access to sales



**For Love & Lemons**

For Love & Lemons Knitz Back To  
Basics Bodysuit

FREE 3 DAY  
SHIPPING &  
FREE RETURNS



(<http://dictionary.reference.com/slideshows/christmas-carols#wassail>)

**project** (<http://static.sfdict.com/staticrep/dictaudio/P08/P0817700.mp3>)

[*n.* **proj**-ekt, -ikt; *v.* **pruh-jekt**]

Synonyms   Examples   Word Origin

**noun**

1. something that is contemplated, devised, or planned; plan; scheme.
2. a large or major undertaking, especially one involving considerable money, personnel, and equipment.
3. a specific task of investigation, especially in scholarship.
4. *Education.* a supplementary, long-term educational assignment necessitating personal initiative, undertaken by an individual student or a group of students.
5. Often, **projects**. housing project ([http://dictionary.reference.com/browse/housing project](http://dictionary.reference.com/browse/housing%20project)).

**verb (used with object), project**

6. to propose, contemplate, or plan.
7. to throw, cast, or impel forward or onward.

What is yule  
Christmas c

8. to set forth or calculate (some future thing):  
*"They projected the building costs for the next five years."*
9. to throw or cause to fall upon a surface or into space, as a ray of light or a shadow.
10. to cause (a figure or image) to appear, as on a background.
11. to regard (something within the mind, as a feeling, thought, or attitude) as having some form of reality outside the mind:  
*"He projected a thrilling picture of the party's future."*
12. to cause to jut out or protrude.

## verb (used without object), **project**

18. to extend or protrude beyond something else.
19. to use one's voice forcefully enough to be heard at a distance, as in a theater.
20. to produce a clear impression of one's thoughts, personality, role, etc., in an audience; communicate clearly and forcefully.
21. *Psychology.* to ascribe one's own feelings, thoughts, or attitudes to others.

## Origin

Latin	Middle English
( <a href="http://dictionary.reference.com/browse/Medieval%20Latin">http://dictionary.reference.com/browse/Medieval%20Latin</a> )	( <a href="http://dictionary.reference.com/browse/Middle%20English">http://dictionary.reference.com/browse/Middle%20English</a> )

1350-1400

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1350-1400; (noun) Middle English *project* (e) design, plan < Medieval Latin *prōjectum*, Latin: projecting part, noun use of neuter of Latin *prōjectus*, past participle of *prōicere* to throw forward, extend, equivalent to *prō-* pro- (<http://dictionary.reference.com/browse/pro->)<sup>1</sup>+ *-icere*, combining form of *jacere* to throw; (v.) late Middle English *project* (e) (past participle) extended, projected < Latin *prōjectus*

## Related forms

**projectable**, adjective

**projectingly**, adverb

**counterproject**, noun

**nonprojecting**, adjective

**reproject**, verb

## Synonyms

**1.** proposal. See plan (<http://dictionary.reference.com/browse/plan>). **6.** contrive, scheme, plot, devise. **8.** predict. **18.** bulge, obtrude, overhang.

Dictionary.com Unabridged

Based on the Random House Dictionary, © Random House, Inc. 2014.

Cite This Source (<http://dictionary.reference.com/cite.html?qh=project&ia=luna>)

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## Examples from the web for project

The road is long from the *project* to its completion.

He entertains your thought or your *project* with sympathy and praise.

The boring *project* manager, in other words, meant more to the success or failure of the *project* than did the flashy designer.

## British Dictionary definitions for project

# project

noun ('prɒdʒekt)

1. a proposal, scheme, or design
2.
  - a. a task requiring considerable or concerted effort, such as one by students
  - b. the subject of such a task
3. (**US**) *short for* housing project (/browse/housing project)

verb (prə'dʒekt)

Collins English Dictionary - Complete & Unabridged 2012 Digital Edition

© William Collins Sons & Co. Ltd. 1979, 1986 © HarperCollins

Publishers 1998, 2000, 2003, 2005, 2006, 2007, 2009, 2012

Cite This Source (<http://dictionary.reference.com/cite.html?qh=project&ia=ced2>)

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## Word Origin and History for project

*n.*

c.1400, "a plan, draft, scheme," from Latin *proiectum* "something thrown forth," noun use of neuter of *proiectus*, past participle of *proicere* "stretch out, throw forth," from *pro-* "forward" (see *pro-* (/browse/pro-)) + combining form of *iacere* (past participle *iactus*) "to throw" (see *jet* (/browse/jet) (v.)).

Meaning "scheme, proposal, mental plan" is from c.1600. Meaning "group of low-rent apartment buildings" first recorded 1935, American English, short for *housing project* (1932). Related: *Projects*. *Project manager* attested from 1913.

*v.*

late 15c., "to plan," from Latin *proiectus*, past participle of *proicere* (see *project* (/browse/project) (n.)). Sense of "to stick out" is from 1718. Meaning "to cast an image on a screen" is recorded from 1865. Psychoanalytical sense, "attribute to another (unconsciously)" is from 1895 (implied in a use of *projective*). Meaning "convey to others by one's manner" is recorded by 1955. Related: *Projected* (/browse/Projected); *projecting*.

Online Etymology Dictionary, © 2010 Douglas Harper

Cite This Source (<http://dictionary.reference.com/cite.html?qh=project&ia=etymon2>)

## project in Medicine

**project** proj·ect (prŏj'kt', -ĭkt)

*n.*

1. A plan or proposal; a scheme.
2. An undertaking requiring concerted effort.

*v.* (prə-jĕkt') **pro·ject·ed**, **pro·ject·ing**, **pro·jects**

1. To extend forward or out; jut out:
2. To cause an image to appear on a surface.
3. In psychology, to externalize and attribute something, such as an emotion, to someone or something else.

The American Heritage® Stedman's Medical Dictionary

Copyright © 2002, 2001, 1995 by Houghton Mifflin Company. Published by Houghton Mifflin Company.  
Cite This Source (<http://dictionary.reference.com/cite.html?qh=project&ia=ahsmd>)

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## Slang definitions & phrases for project

### project

#### **Related Terms**

crash program (/browse/crash program)

The Dictionary of American Slang, Fourth Edition by Barbara Ann Kipfer, PhD. and Robert L. Chapman, Ph.D.  
Copyright (C) 2007 by HarperCollins Publishers.  
Cite This Source (<http://dictionary.reference.com/cite.html?qh=project&ia=das>)

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## project in Technology

Subsystem of ICES. Sammet 1969, p.616.

The Free On-line Dictionary of Computing, © Denis Howe 2010 <http://foldoc.org> (<http://foldoc.org>)  
Cite This Source (<http://dictionary.reference.com/cite.html?qh=project&ia=foldoc>)



Feedback (<mailto:feedback@dictionary.com?subject=Feedback%20for%20Dictionary.com%20Mobile%20Web%20Site>)  
Privacy (<http://dictionary.reference.com/privacy>) Terms of Use (<http://dictionary.reference.com/terms>)  
Our Apps (<http://app.dictionary.com/appswall>)

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**ATTACHMENT B**

# HUDSON FAIRFAX GROUP

india continuum fund

## Historical Performance (%)

HFG Since Inception: 44.20%

2006	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	YTD
HFG India							1.46	4.48	4.73	3.46	2.92	2.62	21.31
Nifty							0.64	8.61	5.11	4.34	5.62	0.30	26.99
2007													
HFG India	0.74	-5.33	0.62	6.45	4.80	1.50	0.01	0.00	9.38				18.86
Nifty	2.93	-8.26	2.04	6.97	5.09	0.53	4.88	-1.43	12.49				26.63

Note: Performance is net of all Management and Performance fees. The above stated returns are unaudited and represent blended returns of the master fund. Actual returns may vary depending on allocation of expenses, entry times or other factors. The Fund began trading on July 17, 2006. July 2006 performance figures are from July 17<sup>th</sup> to July 31<sup>st</sup>.

## Monthly Review

September was our strongest month since launching in July 2007. The long portfolio surged on the strength of the energy, real estate, metals, cement, chemicals, media and telecom sectors. The continuing appreciation of the Rupee held the Technology sector back, while profit-taking affected the engineering and construction sectors. We do, however, continue to like the fundamentals in these areas. Our exposure levels were generally bullish through the period, though we enhanced our short position towards the end of the month as the Nifty rallied to historic highs. Going forward, we continue to like the overall market fundamentals and see a global re-orientation to India. Although this should drive prices higher, we continue to maintain a cautious view around political uncertainty and potential additional fallout in the sub-prime sector.

## Month-End Portfolio Data

	Exposure	Number of Positions	Largest Position	5 Largest Positions	Attribution	Avg Cash Balance
Long	89.85%	29	7.66%	31.42%	13.06%	12.73%
Short*	15.81%	1	15.81%	15.81%	-1.38%	
Gross	105.67%	30				
Net	74.04%					

\* Represents option premium value

\*\* Market Capitalization sizes defined as: Large > 1.5BN · Mid 100MM to 1.5BN · Small < 100MM

## Market Cap Exposure\*\*

	Large	Mid	Small
%	82.45%	17.55%	0.0%
#	23	6	0

## Sector Exposure (Total)

Auto & Auto Ancillary	Banking	Cement	Chem	Diversified	Engineering	Infrastructure	Media	Metals & Mining	Oil & Gas	Others	Pharma & Healthcare	Power & Utilities	RE & Prop	Tech	Telecom
2.06%	4.71%	2.44%	1.87%	4.09%	15.75%	2.11%	3.15%	7.16%	10.95%	5.81%	3.01%	12.83%	4.67%	5.50%	3.75%

## Fund Description

HFG India Continuum Fund is an India focused long/short equity strategy. Hudson Fairfax Group, the management company, is a strategic India investment firm based in New York City. The Mumbai-based Portfolio Advisory team is led by Ravi Gopalakrishnan, who has 14 years experience in the Indian markets, the last six as a Portfolio Manager. The New York based Investment Committee is led by Michael Landry, the former Global Portfolio Manager for Templeton, with over 25 years of emerging market investment experience. While we are bullish on the India story, we believe in a disciplined strategy, and are prepared for less attractive markets. The Fund will move to protect its core positions, through the judicious use of cash, sector rotation, as well as the shorting of specific names and indices, subject to prevailing Indian regulations.

## Terms & Conditions

Min. Investment	\$1,000,000	Redemption Penalty	2% (1 <sup>st</sup> 12 Months)	US Counsel	WilmerHale
Management Fee	2%	Withdrawals	Monthly w/ 30 Days	Master Feeder	Yes
Performance Fee	20%	Prime Broker	Citigroup Global Markets	Fund Manager	Hudson Fairfax Group, LLC
High Water Mark	Yes	Auditor	BDO Seidman	Administrator	Citco Fund Services (Dublin)

## Contact

### Boomerang Capital

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